

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Wade Stephney,)	Civil Action No. 8:08-3290-MBS
)	
Plaintiff,)	
)	
v.)	ORDER AND OPINION
)	
C. A. Baker, Magistrate Darlington)	
County; G. L. Bell, Magistrate)	
Darlington County; D. B. Curtis,)	
Magistrate Darlington County; DCDC;)	
Sheriff Dept; Public Defender,)	
)	
)	
Defendants.)	
_____)	

This is an action brought by Wade Stephney (“Plaintiff”) against three county magistrates in Darlington County, the Darlington County Detention Center (“DCDC”), the Darlington County Sheriff’s Department, and the “Public Defender” (collectively “Defendants”) pursuant to 42 U.S.C. § 1983. Plaintiff claims that: (1) the \$26,000 bail amount was excessive; (2) a preliminary hearing was not held within ten days; (3) no probable cause existed; and (4) the plaintiff seeks removal from state jurisdiction. (Compl.). Plaintiff seeks a court order prohibiting the Darlington County magistrates from denying the plaintiff a preliminary hearing; a court order granting the plaintiff access to a law library, a notary public, and pre-trial writs, motions, and appeals; and “\$25,000,00” in damages for gross negligence, mental anguish, and violations of civil rights.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bruce Howe Hendricks for pretrial handling. The Magistrate Judge reviewed the complaint and filed a Report and Recommendation on October 7, 2008. The Report and Recommendation recommended that: (1) the three Darlington County magistrates named

as defendants are subject to summary dismissal because of judicial immunity; (2) the Darlington County Detention Center is a group of buildings or a facility and is not a person subject to suit under 42 U.S.C. § 1983; (3) the Darlington County Sheriff's Department is an arm of the State and is subject to summary dismissal because of Eleventh Amendment immunity; (4) the "Public Defender" is entitled to summary dismissal because he or she has not acted under color of state law. (Entry 9, at 4). Accordingly, the Magistrate Judge recommended that Plaintiff's complaint be dismissed.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). The district court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge's report to which objections have been filed. Id. The district court need not conduct a *de novo* review when a party makes only general and conclusory objections that do not direct the court to a specific error in the Magistrate Judge's proposed findings and recommendations. Orpiano v. Johnson, 687 F.2d 44, 47-48 (4th Cir. 1982).

Plaintiff filed an objection to the Report and Recommendation on October 16, 2008, in which he continued to assert the merits of his complaint. (Entry 12). Petitioner failed, however, to direct the court's attention to a specific error in the Magistrate Judge's findings and recommendation. Nevertheless, the court has conducted a *de novo* review of the petition and concludes that Defendants are entitled to dismissal for the reasons set forth above.

The court adopts the Recommendation of the Magistrate Judge for the reasons set forth herein. The complaint is dismissed *without prejudice* as an unexhausted § 1983 claim. Respondent is not required to file a return. Entry 16 is **denied** as moot.

IT IS SO ORDERED.

s/Margaret B. Seymour
Margaret B. Seymour
United States District Judge

July 16, 2009
Columbia, South Carolina

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.